

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

GLEND SUE GARDNER, Individually and)	CASE NO. 4:21-CV-03145
As Personal Representative of The Estate of)	
JACOB GARDNER, and DAVID GARDNER,)	
)	
Plaintiffs,)	
)	
vs.)	<u>DEFENDANTS FREDERICK D.</u>
)	<u>FRANKLIN AND DOES 1 AND 2'S</u>
)	<u>MOTION TO DISMISS</u>
FREDERICK D. FRANKLIN, DONALD W.)	
KLEINE, DOUGLAS COUNTY)	
ATTORNEY'S OFFICE, DOUGLAS)	
COUNTY, NEBRASKA, and DOES 1 & 2,)	
)	
Defendants.)	

COME NOW Defendants Frederick D. Franklin and Does 1 and 2, in their individual and official capacities, by and through their undersigned counsel, pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), and respectfully move this Court for an Order dismissing Plaintiffs' Complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted.¹ These Defendants submit a brief in support of their motion contemporaneously herewith.

WHEREFORE, Defendants Frederick D. Franklin and Does 1 and 2 respectfully request an Order dismissing Plaintiffs' Complaint with prejudice, at Plaintiffs' cost, and for such other and further relief as the Court deems fair and just.

Dated this 30th day of December, 2021.

Respectfully submitted,

FREDERICK D. FRANKLIN and DOES 1 AND 2,
Defendants

¹ Franklin has not been served with the Summons and Complaint but voluntarily enters his appearance herein. While Plaintiffs' counsel previously represented to the Court in an unverified pleading that he made efforts to serve Franklin on November 17, 2021, and that Franklin answered his doorbell at his Omaha residence when the process server rang (*see* Filing 19, ¶8), those allegations are demonstrably false, as Franklin was not within the State of Nebraska at the time of the alleged attempt to serve Franklin with process at his Omaha residence.

BY: /s/ Patrick S. Cooper

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ATTORNEYS FOR DEFENDANTS FREDERICK

D. FRANKLIN AND DOES 1 AND 2

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2021, I electronically filed the foregoing Motion to Dismiss with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel of record, including:

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